

ESTTA Tracking number: **ESTTA256556**

Filing date: **12/22/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	DrugTech Corporation
Granted to Date of previous extension	03/04/2009
Address	300 Delaware Avenue, Suite 1270 Wilmington, DE 19801 UNITED STATES
Attorney information	Bryce J. Maynard Buchanan Ingersoll & Rooney P.O. Box 1404 Alexandria, VA 22313-1404 UNITED STATES bryce.maynard@bipc.com

Applicant Information

Application No	77498929	Publication date	11/04/2008
Opposition Filing Date	12/22/2008	Opposition Period Ends	03/04/2009
Applicant	PURE Bioscience 1725 Gillespie Way El Cajon, CA 92020 UNITED STATES		

Goods/Services Affected by Opposition

Class 001. All goods and services in the class are opposed, namely: Chemicals for use in agriculture; Food preservative compositions; Specialty chemicals, namely, chemical additives for general industrial use in the manufacture of a wide variety of goods
Class 003. All goods and services in the class are opposed, namely: Disinfectant soaps
Class 005. All goods and services in the class are opposed, namely: All purpose disinfecting and deodorizing preparations; Antimicrobial preservatives for cosmetics and pharmaceuticals; Pharmaceuticals, namely, anti-infectives

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2441392	Application Date	10/29/1998
Registration Date	04/03/2001	Foreign Priority Date	NONE
Word Mark	NUTRINATE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2000/06/14 First Use In Commerce: 2000/06/14 Prenatal nutritional supplement		

Attachments	Notice of Opposition NUTRIPURE.pdf (5 pages)(30215 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Bryce J. Maynard/
Name	Bryce J. Maynard
Date	12/22/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

RE: U.S. Trademark Application Serial No. 77/498,929
Published in the *Official Gazette* on November 4, 2008

DRUGTECH CORPORATION,)	
)	
Opposer,)	
)	Opposition No. _____
-v-)	
)	
PURE BIOSCIENCE)	
)	
Applicant)	
)	
Attorney Docket No. 1032058-000783)	
_____)	

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Commissioner:

In the matter of U.S. Trademark Application Serial No. 77/498,929, filed on June 13, 2008 by PURE Bioscience (“Applicant”), to register the mark NUTRIPURE (“Applicant’s NUTRIPURE Mark”) in connection with "chemicals for use in agriculture; food preservative compositions; specialty chemicals, namely, chemical additives for general industrial use in the manufacture of a wide variety of goods" in International Class 1; "disinfectant soaps" in International Class 3; and "all

purpose disinfecting and deodorizing preparations; antimicrobial preservatives for cosmetics and pharmaceuticals; pharmaceuticals, namely, anti-infectives" in International Class 5 ("Applicant's Goods"), and published in the *Official Gazette* on November 4, 2008, Drugtech Corporation ("Opposer") believes that it will be damaged by registration of Applicant's NUTRIPURE Mark and hereby opposes same. The grounds for this opposition are as follows:

1. Applicant is the record owner of Application Serial No. 77/498,929 for Applicant's NUTRIPURE Mark in connection with Applicant's Goods.

2. Upon information and belief, Applicant did not use Applicant's NUTRIPURE Mark in connection with Applicant's Goods prior to June 13, 2008, the filing date of Application Serial No. 77/498,929.

3. Upon information and belief, Applicant did not use Applicant's NUTRIPURE Mark in connection with Applicant's Goods in interstate commerce in the United States prior to June 13, 2008, the filing date of Application Serial No. 77/498,929.

4. Opposer is a Delaware Corporation with a business address at 900 Market Street, Wilmington, Delaware 19801.

5. Opposer is the owner of U.S. Trademark Registration No. 2,441,392 for the mark NUTRINATE (hereinafter "Opposer's NUTRINATE Mark") in connection with "prenatal nutritional supplement" in International Class 5 (hereinafter referred to as "Opposer's Goods").

6. Commencing long prior to the filing date of Application Serial No. 77/498,929 and any use by Applicant of Applicant's NUTRIPURE Mark, Opposer has been and is now engaged in the business of advertising, offering for sale and selling Opposer's Goods under Opposer's NUTRINATE Mark.

7. Commencing long prior to the filing date of Application Serial No. 77/498,929 and any use by Applicant of Applicant's NUTRIPURE Mark, Opposer has used and is now using Opposer's NUTRINATE Mark in connection with the advertising, offering for sale and selling of Opposer's Goods in interstate commerce in the United States.

8. Due to Opposer's longstanding and continuous use of Opposer's NUTRINATE Mark in connection with Opposer's Goods, Opposer's NUTRINATE Mark has become well known as designating Opposer's Goods throughout the United States.

9. Opposer enjoys substantial and exclusive goodwill and a fine reputation throughout the United States in connection with Opposer's NUTRINATE Mark.

10. Applicant's NUTRIPURE Mark in Application Serial No. 77/498,929 is highly similar to Opposer's NUTRINATE Mark in sight, sound, and commercial impression.

11. Applicant's Goods are closely related to Opposer's Goods and are sold to identical or highly similar types of consumers through similar channels of trade.

12. Applicant's NUTRIPURE Mark in Application Serial No. 77/498,929 so resembles Opposer's previously registered and used NUTRINATE Mark as to be likely, when applied to Applicant's Goods, to cause confusion, to cause mistake, or to deceive, by creating the erroneous impression that Applicant's Goods originate from or are associated with Opposer, or that Applicant's Goods are authorized, endorsed or sponsored by Opposer.

13. Applicant's filing of Application Serial No. 77/498,929 for Applicant's NUTRIPURE Mark was without license, authorization or permission from Opposer.

14. The granting of a trademark registration for Applicant's NUTRIPURE Mark would violate and diminish the prior and superior rights of Opposer in Opposer's NUTRINATE Mark and would be in violation of 15 U.S.C. § 1052(d).

15. Opposer would be damaged if Application Serial No. 77/498,929 is allowed to register because Applicant will obtain statutory rights in Applicant's NUTRIPURE Mark in violation and derogation of the established prior rights of Opposer in Opposer's NUTRINATE Mark.

WHEREFORE, Opposer requests that its Opposition be sustained, that Application Serial No. 77/498,929 be rejected and that the registration of Applicant's NUTRIPURE Mark as a trademark to Applicant be refused, and for such other relief as may be deemed just and proper.

Respectfully submitted,

DRUGTECH CORPORATION

Date: December 22, 2008

/Bryce J. Maynard/
Bassam N. Ibrahim
Bryce J. Maynard
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(703) 836-6620

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served
this 22nd day of December, 2008 by first-class mail, postage prepaid, on:

PURE BIOSCIENCE
1725 GILLESPIE WAY
EL CAJON, CA 92020-1098

Michelle A. Jackson